

*The Amherst Alliance*  
**"Voices For Choices"**  
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November 23, 2004

Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**RE: PARTIAL OPPOSITION TO MOTION FOR EXTENSION OF TIME  
IN DOCKET 04-233 (FCC'S NOI ON BROADCAST LOCALISM)**

Dear FCC Commissioners and Staff,

I am Stacie Trescott, the newly elected President of THE AMHERST ALLIANCE. I also lead the MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN and serve as Editor of JAMRAG MAGAZINE, which covers the music scene in Metro Detroit.

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group for media reform. Amherst played a key role in the movement to establish Low Power FM -- and now calls for a companion Low Power *AM* Radio Service, able to reach large cities and other areas where the FM spectrum is too congested to permit Low Power FM stations. Amherst also advocates translator reform and Primary Service Status for all Low Power Radio stations and all Class D educational stations.

Amherst has made numerous submissions in Docket RM-10803 (the FCC's Task Force on ways to promote Broadcast Localism). In Docket 04-37 (the FCC's *Notice Of Inquiry* on ways to promote Broadcast Localism), it led 26 parties (including MMWC) in a July 21, 2004 Multi-Party Motion for immediate Docketing of the pending Baumgartner Petition For Rulemaking to establish Low Power AM. The same Multi-Party Motion was also submitted in Docket RM-10803.

The enclosed Partial Opposition responds to the November 17, 2004 Motion For Extension Of Time by the National Association of Broadcasters (NAB). The reply comments deadline in this Docket has *already* been extended by 3 months, at the request of NAB and others. We oppose adding another month *unless* discussions of LPAM, Primary Service Status and translator reform are excluded from the deadline extension. These 3 topics have been under discussion at the FCC for years -- and the need for action on them is too urgent to let another 30 days pass by.

**Stacie Trescott  
President, THE AMHERST ALLIANCE  
November 23, 2004  
Page 2**

**We hope and pray that the Federal Communications Commission will understand the gravity of the current situation, and grant the request in our Partial Opposition.**

**Sincerely,**

**Stacie Trescott  
President, THE AMHERST ALLIANCE**

**CC: Larry A. Walke, NATIONAL ASSOCIATION OF BROADCASTERS  
Don Schellhardt, SCHELLHARDT ADVOCACY SERVICES**

**UNITED STATES OF AMERICA**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

**Notice Of Inquiry** )  
**On Ways To Promote** ) **FCC Docket 04-233**  
**Broadcast Localism** )

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**PARTIAL OPPOSITION  
OF THE AMHERST ALLIANCE  
TO REQUEST FOR EXTENSION OF TIME  
BY THE NATIONAL ASSOCIATION OF BROADCASTERS**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Identification Of THE AMHERST ALLIANCE	1
NAB's Latest Request For Extension Of Time	3
The Case Against NAB's Latest Extension Request	3
A Proposed "Middle Ground": A <i>Partial</i> Extension	5
"The Ripe Record" For Action On LPAM	6
The Urgent Need For Action On Translator Reform <i>And</i> Primary Service Status	9
CONCLUSION	13
<i>Signatory Page</i>	14

**UNITED STATES OF AMERICA**  
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**PARTIAL OPPOSITION  
OF THE AMHERST ALLIANCE  
TO REQUEST FOR EXTENSION OF TIME  
BY THE NATIONAL ASSOCIATION OF BROADCASTERS**

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group for media reform in general and Low Power Radio in particular. It was founded on September 17, 1998, at a meeting in Amherst, Massachusetts.

Amherst has been led during 5 of the last years by DON SCHELLHARDT, ESQUIRE of Connecticut, who is also one of its Co-Founders. Last month, Mr. Schellhardt resigned as President, in order to pursue a Master of Arts in Asia Pacific Studies (MAPS) degree at the University of San Francisco. His successor is STACIE TRESCOTT of Michigan, who also leads the MICHIGAN MUSIC IS WORLD CLASS!! (MMWC) CAMPAIGN and edits JAMRAG MAGAZINE.

During its first 6 years of life, Amherst played a key role in the movement to establish, defend and protect a Low Power FM Radio Service. During the same period, Amherst has also fought against the easing of media ownership ceilings and challenged the rapid commercialization of certain questionable new technologies.

As it begins its 7<sup>th</sup> year of life, THE AMHERST ALLIANCE is building on its years of support for establishment of a companion Low Power *AM* Radio Service -- able to reach large cities and other areas where the FM spectrum is currently too congested to allow room for many Low Power FM stations. In this Docket, and simultaneously in Docket RM-10803, Amherst led 25 other groups in a July 21, 2004 Multi-Party Motion for immediate Commission action on Low Power AM. The Motion seeks immediate Docketing, for public comment, of the pending Petition For Rulemaking for a Low Power AM Radio Service. That Petition was written by FRED BAUMGARTNER, C.P.B.E. of Colorado and filed with the FCC's Office of the Secretary in June of 2003. On October 22, 2003, at the request of Mr. Baumgartner, the Petition was also submitted in Docket RM-10803 by NICKOLAUS E. LEGGETT of Virginia.

Amherst is also pressing for translator reform -- as well as Primary Service Status for all Low Power Radio stations, FM or AM, and all Class D educational stations.

### **NAB's Latest Request For Extension Of Time**

On November 17, 2004, the NATIONAL ASSOCIATION OF BROADCASTERS (NAB) filed a Motion For Extension Of Time in Docket 04-233. The Request asks the FCC to add another month to the comment period -- extending the reply comments deadline from December 1, 2004 to January 1, 2005.

### **The Case Against NAB's Latest Extension Request**

NAB asks for more time because the comments in Docket 04-233 have been so numerous: 81,643 filings in the Docket, as of November 22, 2002, with the vast majority of them appearing to have come from individual concerned citizens. Having seen the *hundreds* of thousands of filings in the recent media consolidation Dockets, with the vast majority of them *opposing* further media consolidation, this public response does not surprise Amherst. We suspect the eventual "head count" of public input will favor decisive action to promote Broadcast Localism *and* reduce the current concentrations of media ownership.

**In The Meantime:** NAB is claiming that it cannot review so many comments in the time frame that is now available.

This argument would carry much more weight if the NAB's November 17 Motion were the *first* Motion For Extension Of Time in this Docket. In fact, however, the reply comments deadline has *already* been extended by 3 months -- from October 1 to December 1 -- at the request of NAB and other parties. To put it another way, the original comment period has already been doubled -- from 3 months to 6 months -- as a result of successful extension requests. If the latest Motion is granted, the already doubled comment period will grow by another month.

Under the circumstances, Amherst strongly questions the equity of fully granting yet another Extension Motion. To justify a *fourth* month of additional delay, NAB needs a more compelling reason than it has provided in its Motion.

Ironically: For all we know, the very volume of response that is overwhelming NAB may be, at least in part, a direct result of the comment extensions that NAB and others have already obtained. Perhaps more time, which is what NAB had sought, encouraged the filing of more comments.

If so, then NAB itself made, and presumably benefited from, a tradeoff. Parties who now await relief should not have to pay the "downside" price for NAB's choice.

**A Proposed “Middle Ground”: A Partial Extension**

In the interest of promoting greater courtesy and amicability in the regulatory process, THE AMHERST ALLIANCE is willing to support a 1-month extension *if* discussions of 3 specific topics are *explicitly excluded* from that extension.

These 3 topics are as follows:

(1) Low Power AM;

(2) Translator reform;

*And/or*

(3) Primary Service Status for Low Power Radio stations and Class D educational stations.

All 3 topics should be excluded from any extension because, after years of discussions and complaints before the FCC, the existing record is more than justifies movement into the stage of proposed rulemaking(s). There is no reason not to “close the books” on these 3 topics in December, thus permitting FCC staffers to begin the first drafts of proposed rules while comments continue to flow about other issues raised in the Broadcast Localism NOI.

LPAM, translator reform and Primary Service Status have all been the subject of Commission filings and discussions for years. “The record is ripe” for the FCC to step into the proposed rule stage for all 3 issues.

In addition, in the case of the *last* two issues -- translator reform and Primary Service Status -- there is the further consideration that irreparable damage might be done to some parties if relief is again delayed.

### **“The Ripe Record” For Action On LPAM**

The concept of a Low Power *AM* Radio Service can be traced all the way back to the July 1997 Leggett/Schellhardt Petition For Rulemaking that triggered the FCC’s first deliberations, in FCC Docket RM-9208, on the subsequently established Low Power *FM* Radio Service. That Petition sought the authorization of Low Power Radio stations on both the FM *and* the AM Bands.

The option of a companion Low Power AM Radio Service remained under the Commission’s consideration into the proposed rulemaking stage (FCC Docket 99-25) in 1999. The FCC eventually denied the proposal for a separate LPAM Radio Service, but when it did so it was not aware:

- (1) That there would be such a small number of frequencies available for Low Power FM stations in a large number of large cities, and in other areas where the FM spectrum is already highly congested;
- (2) That Congress would aggravate this scarcity of urban opportunities by enacting additional channel spacing requirements for Low Power FM stations, which have since been discredited through a Congressionally mandated independent study by the MITRE Corporation, but which Congress has not yet repealed;

*And*

- (3) That the Commission's delays in implementation of the Low Power FM Radio Service, greatly aggravated by a deluge of new applications for out-of-town translator stations, would further aggravate the scarcity of Low Power FM opportunities, in urban areas and elsewhere, by enabling station applications that post-date LPFM authorization to gain "squatters' rights" over LPFM applications that FCC policies have delayed.

In light of these intervening events, spread over the 5 years since the FCC rejected the option of Low Power AM, reconsideration of the LPAM option is warranted.

Such reconsideration was formally sought, On The Record, in June of 2003. At that time, FRED BAUMGARTNER, C.P.B.E. of Colorado filed with the FCC's Office of the Secretary a Petition For Rulemaking to establish a new Low Power AM Radio Service. When, 4 months later, the FCC had still not assigned a Docket Number to the Baumgartner Petition, NICKOLAUS E. LEGGETT of Virginia, acting on behalf of Mr. Baumgartner, submitted the Petition in FCC Docket RM-10803 on October 22, 2003.

Thereafter, the Petition was the subject of several Written Comments filed in Docket RM-10803, notably including detailed modifications submitted by THE LPAM TEAM, led by KYLE DRAKE of Minnesota. Other supportive Written Comments on the Baumgartner Petition were filed in FCC Docket RM-10803 by MMWC of Michigan, REC NETWORKS of Arizona, COMMONWEALTH BROADBAND COLLABORATIVE of Massachusetts, KWAQ-AM (then of Kansas, now of Maine) and THE AMHERST ALLIANCE. We incorporate by reference all filings by these parties in FCC Docket RM-10803.

As noted earlier, 26 parties, led by Amherst, filed on June 21, 2004 a Multi-Party Motion that seeks immediate Docketing of the Baumgartner Petition for public comments. We incorporate that Motion, submitted in both Dockets 04-37 and RM-10803, by reference. We are unaware of any response to it by the FCC.

Amherst does not contend that “the record is ripe” for a *final* rule to establish a Low Power AM Radio Service. We submit, however, that the issue has been before the Commission long enough, and has also been the subject of filings with the Commission long enough, to justify issuance of a *proposed* rule without further delay. THE AMHERST ALLIANCE, and the other 25 parties to the Multi-Party Motion of June 21, advocate issuance of a proposed rule which is:

(A) Based on the Baumgartner Petition;

*As modified by*

(B) THE LPAM TEAM recommendations, as filed in Docket RM-10803 on December 5, 2003.

### **The Urgent Need For Action On Translator Reform**

#### ***And Primary Service Status***

Like Low Power AM, Primary Service Status for all Low Power Radio stations was considered by the Commission during the Low Power Radio deliberations in Docket 99-25. Like LPAM, the proposal was rejected at the time.

Also like LPAM, the concept of Primary Service Status is ripe for reconsideration in light of subsequent events. During the 5 years since Primary Service Status was rejected by the Commission, licensed LPFM stations have been displaced from the airwaves, notably in both of the Carolinas, by new, relocating and upgrading full power stations that enjoy Primary Service Status. Class D educational stations have suffered similar fates in Washington State and Pennsylvania.

Both Low Power Radio stations and Class D educational stations operate in a state of perpetual endangerment -- *especially* in the urban areas where independent, locally based stations are already more scarce than elsewhere. If the Commission is serious about promoting Broadcast Localism, it makes no sense to continue allowing these independent, locally based stations to be vanquished from the airwaves at the whim of any megacorporate, out-of-town station that decides to start up, relocate or upgrade on a Low Power Radio or Class D frequency.

THE AMHERST ALLIANCE, joined by other parties, has filed 2 separate Multi-Party Petitions For Rulemaking which include advocacy of Primary Service Status for all Low Power Radio stations, whether FM or AM, LP-10 or LP-100 or higher.

One Petition, which called for general Restructuring Of The FM Band, was filed on April 15, 2002. The other, which we dramatically (but accurately) titled a Petition for *Emergency* Relief, was filed on November 14, 2003. To the best of our knowledge, there has been no Commission response to either Petition, but we can at least affirm that the FCC has been apprised of the *urgent* need for corrective action. Amherst has since voted to back Primary Service Status for Class D stations as well.

If Primary Service Status for *all* Low Power Radio and Class D educational stations is too sweeping for the FCC to adopt, the Commission should least create “wildlife refuges” to assure that *some* of these stations will survive the constant threat of displacement. For example, in a given media market, Primary ServiceStatus could apply to the 5 most senior LPFM stations, the 5 most senior Class D educational stations and -- in the future -- the 5 most senior LPAM stations.

As for translator reform, it has not been a major issue before the FCC for quite as long as LPAM and Primary Service Status. However, it has been a major concern for many parties -- inside and outside the Low Power Radio community -- ever since the “Great Translator Invasion Of 2002”, when more than 15,000 translator applications besieged the FCC over a few days, with some organizations filing thousands of translator applications apiece.

**RADIO WORLD, which reports on the entire radio broadcast industry, has called in a January 2003 editorial for forceful corrective action to end unchecked translator proliferation. Amherst placed this editorial in Docket RM-10803.**

**However, while much of the radio broadcast industry suffers to some extent from runaway translator proliferation, Low Power Radio stations face the greatest dangers -- through no fault of their own. Due to the FCC's delays in LPFM implementation, including the absence of promised "filing windows" for LP-10 applications, aspiring LPFM applicants must watch and wait while translator applications "move ahead of them in line". The combination of delayed LPFM implementation plus unrestrained translator proliferation has conveyed upon out-of-town translators an *artificial* competitive advantage, in the form of potential "squatters' rights", over local LPFM stations they could not best in "a fair fight".**

***In short:***

**Irreparable harm is being done to adversely affected parties by the continued impact of translator proliferation -- as well as the periodic displacement of Low Power FM stations, and Class D educational stations, by new, relocating and upgrading stations that have Primary Service Status.**

**An unnecessary delay of 30 more days, in taking action on Primary Service Status and translator reform, will not mean The End Of The World for the radio broadcasting industry. For one or more small, community-based LPFM or Class D stations, however, a 30-day delay could be a death sentence.**

**Please do not place even one more of these stations at additional, unnecessary risk.**

**Remember: They belong to “an endangered species”.**

## **CONCLUSION**

**For the reasons set forth herein, THE AMHERST ALLIANCE urges the FCC to either deny the NAB’s Motion For Extension Of Time in full *or* to exclude from the extension all discussions which reference:**

**(1) Low Power AM;**

**(2) Translator reform;**

***And/or***

**(3) Primary Service Status for Low Power Radio stations and Class D educational stations.**

Respectfully submitted,

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Stacie Trescott  
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[jamrag@glis.net](mailto:jamrag@glis.net)

Dated: \_\_\_\_\_  
November 23, 2004

I, Stacie Trescott, certify that I have sent a copy of this Partial Opposition to Glenn A. Walke of the National Association of Broadcasters, 771 N Street N.W., Washington, DC 20036.

Dated: \_\_\_\_\_  
November 23, 2004